

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAFAKA MENO MATIYA,

Petitioner,

V.

JEFFREY PERKINS,

Respondent.

CASE NO. 3:24-cv-05892-TL-BAT

REPORT AND RECOMMENDATION

Petitioner, a Coyote Ridge Corrections Center detainee, seeks for the second time federal habeas relief from his 2021 convictions and the 240 months to life sentence of imprisonment in Mason County Superior Court case number 20-1-00147-23 for Rape of a Child in the First, Second and Third Degrees, Child Molestation in the Second and Third Degrees, and Incest in the First, Second and Third Degrees in Mason County Superior Court. *See* Dkt. 8; *see also Person (aka Matiya) v. Andrewski*, 3:23-cv-05434-BJR (First habeas petition challenging the Mason County convictions filed May 12, 2023 and dismissed March 11, 2024).

Because Petitioner has not obtained permission from the Court of Appeals for the Ninth Circuit to file the present second habeas petition, the Court recommends the present habeas petition be dismissed without prejudice and referred to the Court of Appeals for the Ninth Circuit for consideration as an application for leave to file a second or successive petition for writ of

1 habeas corpus. *See* Ninth Circuit Rule 22-3(a).

2 **DISCUSSION**

3 The Court may take judicial notice of its own records and records in other cases. *See*
 4 *Chandler v. United States*, 378 F.3d 206, 900 (9th Cir. 1967) (Court “may take judicial notice of
 5 its own records”); *United States v. Howard*, 381 F.3d 873, 876, n.1 (9th Cir. 2004) (Courts may
 6 “take judicial notice of court records in another case”). The Court’s records establish on May 12,
 7 2023, Petitioner filed a § 2254 habeas petition challenging his convictions and sentence in
 8 Mason County case number 20-1-00147-23 in *Person (aka Matiya) v. Andrewski*, 3:23-cv-
 9 05434-BJR.

10 In the 2023 habeas petition, Petitioner alleged as grounds for relief: (1) “subject matter”
 11 and “personal jurisdiction,” Constitutional infringement- Due Process, Equal Protection, Right to
 12 Remain Silent; (2) Ineffective Assistance of Counsel and Prosecutor Misconduct; (3) Fraud,
 13 Invalid Judgment/Sentence., Misconduct of the State’s Witnesses, Law Enforcement
 14 Expungement of favorable evidence toward defendant; and (4) Violation of police
 15 investigation/petitioner resided outside the State of Washington during charging information-
 16 violation of due process/equal protection. *See* 2023 petition, Dkt. 19. On March 3, 2024, the
 17 Court dismissed the habeas petition on the merits and denied issuance of a certificate of
 18 appealability. *See* 2023 petition, Dkt. 104. On September 12, 2024, the Court of Appeals for the
 19 Ninth Circuit denied issuance of a certificate of appealability. *See* 2023 Petition, Dkt. 116.

20 The habeas petition now before the Court was filed on May 18, 2024. In this petition,
 21 Petitioner again challenges his convictions and sentence in Mason County Superior Court case
 22 number 20-1-00147-23. As ground one for relief, Petitioner alleges:

23 The suspension clause provides that the privilege of the writ of
 habeas corpus shall not be suspended unless when in cases of

1 rebellion or invasion the public safety may require it. The writ of
 2 habeas corpus is a critical check on the executive, ensuring that it
 3 does not detain individuals except in accordance with law.

4 Washington State Court has violated the Suspension Clause. See
 5 Appendix A.

6 Dkt. 8 at 5.

7 As ground two for relief Petitioner alleges:

8 Denied U.S. First Amendment Right to ‘meaningfully’
 9 petition/access to the Courts. Unlawful restraint per his post
 10 conviction denials of U.S. Const. First Amendment ‘redress’
 11 access to Courts, 14th Amendment Equal Protections Due Process,
 12 Wash. Cont. Art. 1 and 2 Supreme Law § 3, access § 4 political
 13 right to petition § 29 mandatory.

14 Dkt. 8 at 7.

15 Petitioner fleshes out these claims in an Affidavit in Support of Petition and three
 16 Exhibits that he attached to his habeas petition. *See* Dkt. 8 (attachments). The Affidavit in
 17 Support first asserts the Court of Appeals for the Ninth Circuit in Petitioner’s first habeas
 18 petition “accepted the R&R of the magistrate without consideration of duties under USCS Sec.
 19 2254 cases Rule 8.” *See* Dkt. 8, Affidavit at 1.

20 Petitioner next challenges the Washington State Courts’ handling of post-conviction
 21 pleadings he filed in 2023 and 2024 contending he was denied the right to petition for redress in
 22 the state courts when his “new writ” was misconstrued as a personal restraint petition, transferred
 23 to the State Court of Appeals, and then transferred to the Washington Supreme Court. *Id.* at 1-2.
 24 Petitioner contends he filed an “objection to the misdirected state court order changing his
 25 ‘timely’ Habeas corpus to a Personal Restraint Petition.” *Id.* at 2. Petitioner argues the state
 26 court’s treatment of his post-conviction pleadings suspended his right to relief citing as authority
 27 18 U.S.C. § 242 (Deprivation of rights secured by the constitution is a federal criminal offense).
 28

1 Petitioner further argues the Washington State Courts denied him collateral relief this
 2 year without assistance of counsel or conducting an evidentiary hearing, and that this Court's
 3 previous order dismissing his first habeas petition in case number 23-cv-05434-BJR failed to
 4 recognize the "State Courts failure in its statutory duties 28 USC 2254(d)(e) the magistrate
 5 appears to have abused his discretion with the improper application of USC Sec, 2254 cases R.
 6 8." Petitioner contends in the present petition that he has "re-demonstrated the State of
 7 Washington seemingly poor practice of ignoring pro-se pleadings" that are meritorious. Dkt.8,
 8 Affidavit at 3.

9 Petitioner also contends the claims described above "were not available until the State
 10 high court showed they were willing to pass upon not correct this discrepancy plus the
 11 Washington high court had not suspended Petitioner's Habeas corpus until this last 'timely'
 12 filing." *Id.*

13 The Court's records thus establish, the present habeas petition is the second habeas
 14 petition Petitioner has filed challenging his convictions and sentence in Mason County case
 15 number 20-1-00147-23. Under 28 U.S.C. § 2244(b)(1), the Court must dismiss any claim which
 16 was presented in a prior habeas petition. Hence, Petitioner's challenges to this Court's prior
 17 dismissal of his petition and the Ninth Circuit's denial of a certificate of appealability should be
 18 dismissed as improperly brought. Petitioner sought review in the Court of Appeals for the Ninth
 19 Circuit of this Court's 2023 order dismissing the first habeas corpus petition. The Court of
 20 Appeals denied issuance of certificate of appealability thereby terminating review and finalizing
 21 this Court's dismissal order.

22 A claim in a second or successive habeas petition must be dismissed even if it was not
 23 presented in a prior habeas petition, unless the claim rests on new law, new evidence, or

1 Petitioner's actual innocence. 28 U.S.C. § 2244(b)(2). Even in the latter circumstance, leave of
2 the Court of Appeals is required to proceed with the successive petition. 28 U.S.C. § 2244(b)(3).

3 To obtain relief in a second or successive federal habeas corpus application. Petitioner
4 must fulfill the requirements of 28 U.S.C. § 244(b)(1). *See Burton v. Stewart*, 549 U.S. 147, 152
5 (2007). Under 28 U.S.C. § 2244(b)(3)(A):

6 Before a second or successive application permitted by this section is filed in the
7 district court, the applicant shall move in the appropriate court of appeals for an
order authorizing the district court to consider the application.

8 This "gatekeeping" provision requires Petitioner to file in the court of appeals a motion for leave
9 to file a second or successive habeas application and make *prima facie* showing the application
10 satisfies the requirements of 28 U.S.C. § 2244(b). *Felker v. Turpin*, 518 U.S. 651, 657 (1996). *Id.*
11 The failure to meet this "gatekeeping" requirement leaves the District Court without jurisdiction
12 to entertain the habeas petition. *Burton*, 549 U.S. at 153; *see also Cooper v. Calderon*, 274 F.3d
13 1270, 1274–75 (9th Cir. 2001) (per curiam) (Filing a motion in the court of appeals and
14 obtaining permission to file a second habeas petition is a jurisdictional requirement). Here there
15 is nothing showing Petitioner has sought or obtained such permission.

16 The phrase "second or successive" is a term of art and thus a second habeas petition is
17 not automatically barred as second or successive, simply because it is the second petition filed.
18 Rather a Court should consider whether the prisoner had an opportunity to raise his or her claims
19 in the first petition. *See Hill v. State of Alaska*, 297 F.3d 895, 897–898 (9th Cir. 2002).

20 Here, the Court's records show Petitioner's first habeas petition challenging his Mason
21 County convictions and sentence was adjudicated by this Court on the merits and dismissed in
22 2023. Petitioner appealed the dismissal and the Court of Appeals for the Ninth Circuit denied
23 issuance of a certificate of appealability. There is thus no doubt the present habeas petition is a

1 second or successive petition. *See Tong v. United States*, 81 F.4th 1022, 1025 (9th Cir. 2023)
 2 (Second habeas petition is second or successive if first petition was dismissed on the merits); *see*
 3 *also, McNabb v. Yates*, 576 F.3d 1028, 1029 (9th Cir. 2009).

4 Although the present habeas petition is second or successive, Petitioner argues the Court
 5 should grant him relief because “the claims he presents “were not available until the State high
 6 court showed they were willing to pass upon not correct this discrepancy plus the Washington
 7 high court had not suspended Petitioner’s Habeas corpus until this last ‘timely’ filing.” *Id.*
 8 Petitioner’s present habeas claims is thus an attack upon the Washington State Courts’ process of
 9 adjudicating his most recent state petitions for post-conviction relief. This much is clear as
 10 Petitioner contends the Washington Court of Appeals’ transfer of his recent personal restraint
 11 petitions to the Washington Supreme Court constitute a suspension of the writ of habeas corpus,
 12 as does the Washington Supreme Court’s denial of relief.

13 In support, Petitioner attached the Washington Court of Appeals’ October 9, 2023 order
 14 that transferred Petitioner’s post-conviction attack to the Washington Supreme Court. The order
 15 states in pertinent part “In his fourth petition, Person appears to argue that he was denied due
 16 process and equal protection based on the state’s personal restraint procedures in Title 16 RAP.”
 17 Dkt. 8 Exhibit 4 at 12. Petitioner also attached the April 4, 2024 order of the Washington
 18 Supreme Court which indicates, Petitioner filed numerous personal restraint petitions all of
 19 which were dismissed. *Id.* at 24. In this order, the Washington Supreme Court found Petitioner’s
 20 claims had “no arguable basis for relief in law or in fact” and dismissed Petitioner’s personal
 21 restraint petition as “frivolous.” *Id.* at 26.

22 Petitioner’s challenge to the Washington State post-conviction review process is not a
 23 cognizable ground for federal habeas relief. *Ortiz v. Stewart*, 149 F.3d 923, 939 (9th Cir. 1998);

1 *Gerlaugh v. Stewart*, 129 F.3d 1027, 1045 (9th Cir. 1997). It is well-settled that a claim “alleging
 2 errors in the state post-conviction review process is not addressable through habeas corpus
 3 proceedings” because there is no federal constitutional right to state habeas proceedings. *Franzen*
 4 *v. Brinkman*, 877 F.2d 26, 26 (9th Cir. 1989). *See also Smith v. Andrewski*, 2023 WL 5612294
 5 (W.D. Wash. July 21, 2023) (Report and Recommendation, adopted in *Smith v. Andrewski*, 2023
 6 WL 5609337, (W.D. Wash. Aug. 30, 2023); *Rowland v. Chappell*, 902 F. Supp. 2d 1296, 1338
 7 (N.D. Cal. 2012) (Denial of meaningful review in state collateral proceedings is not cognizable
 8 in federal petition) (*applying Franzen*, 877 F.2d at 26), aff'd, 876 F.3d 1174 (9th Cir. 2017);
 9 *Delgado v. Yates*, 622 F. Supp. 2d 854, 865 (N.D. Cal. 2008) (claim state court violated
 10 petitioner's due process rights by denying state habeas petition without an opinion or evidentiary
 11 hearing is not cognizable).

12 Also, to the extent Petitioner challenges the merits of the Washington Supreme Court's
 13 order finding his request for relief is frivolous, that claim is foreclosed. The Washington
 14 Supreme Court rejected Petitioner's claim the sentence that was imposed was unlawful. This is a
 15 claim Petitioner knew about when he was sentenced in 2021 and is thus not a new claim that
 16 could not have been presented when Petitioner filed his first habeas petition in 2023.

17 For the foregoing reasons, the Court finds the present habeas petition is second or
 18 successive and recommends that this matter be transferred to the Court of Appeals for the Ninth
 19 Circuit pursuant to 28 U.S.C. § 2244(b) and Circuit Rule 22-3(a).

20 The Court also recommends denial of a certificate of appealability. An appeal of a denial
 21 of § 2254 relief may proceed only if a certificate of appealability (“COA”) is issued by the
 22 district or circuit judge. A COA may be issued only where a petitioner has made “a substantial
 23 showing of the denial of a constitutional right.” *See* 28 U.S.C. § 2253(c)(3). A prisoner satisfies

1 this standard “by demonstrating that jurists of reason could disagree with the district court’s
2 resolution of his constitutional claims or that jurists could conclude the issues presented are
3 adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327
4 (2003). Under this standard, the Court finds that no reasonable jurist would disagree Petitioner’s
5 present habeas petition is second or successive, that he has not been granted leave to proceed,
6 and that the grounds for relief he presents are not cognizable grounds for habeas relief.

7 **OBJECTIONS AND APPEAL**

8 This Report and Recommendation is not an appealable order. Therefore, Petitioner
9 should not file a notice of appeal seeking review in the Court of Appeals for the Ninth Circuit
10 until the assigned District Judge enters a judgment in the case.

11 Objections, however, may be filed and served upon all parties no later than **November**
12 **18, 2024**. The Clerk should note the matter for **November 22, 2024**, as ready for the District
13 Judge’s consideration. The failure to timely object may affect the right to appeal.

14 DATED this 4th day of November, 2024.

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BRIAN A. TSUCHIDA
17 United States Magistrate Judge
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